

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JORGE and IMME KLEBE,

Plaintiffs,

vs.

TRI MUNICIPAL SEWER COMMISSION,

Index No. 07-CIV-7071 (KMK)
(Karas, J.)
(Smith, M.J.)

STATEMENT PURSUANT TO
TO LOCAL RULE 56.1

Defendant.

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Pursuant to Rule 56.1(b) of the Civil Rules of this Court, defendant Tri-Municipal Sewer Commission (“Tri-Municipal”) submits this statement of material facts as to which it contends there are no genuine issues to be tried.

1. Tri-Municipal operates a sewage treatment facility in the Town of Poughkeepsie, New York pursuant to a State Pollution Discharge Elimination System (“SPDES”) permit issued by the New York State Department of Environmental Conservation, effective September 1, 1994. (Affidavit of Steven C. Russo, sworn to on April 3, 2008 (“Russo Aff.”) at ¶4.) Tri-Municipal’s SPDES permit contains specific limits relating to the facility’s discharges for the following parameters: flow; CBOD₅¹; suspended solids; settleable solids; pH; Nitrogen, Ammonia; Nitrogen, TKN; temperature; total copper; fecal coliform; total residual chlorine; and Mercury. (Russo Aff. at ¶5.)

2. Jorge and Imssy Klebe sent Tri-Municipal a Notice of Violation and Intent to Sue letter (“NOI letter”), dated February 1, 2007 and signed February 2, 2007. (Russo Aff. Ex. A.)

¹ CBOD₅ is carbonaceous biological oxygen demand.

3. The NOI letter states that Tri-Municipal "has repeatedly violated the limitations imposed by its SPDES permit, causing discharge of unpermitted waste products into the Hudson River." (Russo Aff. Ex. A.)

4. The NOI letter states that Jorge and Imssy Klebe own property on "Sheafe Road, Town of Wappinger, State of New York." (Russo Aff. Ex. A.)

5. The NOI letter does not include information for Tri-Municipal to know what specific standard or limitation it allegedly violated, what activity constituted said violation, or the date the violation allegedly occurred. (Russo Aff. at 8.) The NOI letter does not include the full address and phone number of Jorge and Imssy Klebe. (Russo Aff. at 9.)

6. Jorge and Imme Klebe filed a Notice of Summons and Complaint on August 8, 2007. (Russo Aff. at ¶3.)

Dated: New York, New York
April 3, 2008

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Tri-Municipal Sewer Commission

By:

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